IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
Criminal Revision Application No.89 of 2007
in
Misc.Application No.25 of 2007
in
Sessions Case No.797 of 2007

Sandeep S. Jadhav
& Ors. ..Applicant/Petitioner

versus

The State of Maharashtra ..Respondent.

Mr.G. Kulkarni for the Applicant
Mr.D.P.Adsule APP for respondent No.1
Mr.Chetan Akarkar for the respondent No.2 the original complainant.

Coram : D.G.Karnik, J.
Dated : 4th Dec., 2007

P.C.

1. Heard learned Counsel for the petitioner, learned APP for the State and the learned Counsel for the respondent No.2-the original complainant.

2. This Revision Application is directed against the judgment and order dated 15.2.2007 passed by the learned Addl. Sessions Judge at Kurla, on the application for discharge under Section 227 of the Code of Criminal Procedure.

3. Prosecution case in short is as under:

Prabhavati Ajay Jadhav (hereinafter referred to as the deceased) was married to Ajay Jadhav, on 19.5.2005. On 7.1.2006 the deceased died on account of hanging. On 11.1.2006 the complainant, who is the father of the deceased filed First Information Report with the police alleging that the deceased was harassed for dowry by the husband of the deceased, his parents and brothers. He stated that in the marriage he gave 15 tolas of gold ornaments, furniture and other household articles worth Rs.40,000/- to 50,000/- and spent more than 2 to 2.5 lakhs for the marriage. The husband of the deceased and his parents were demanding a T.V. and other things. All the members of the family were taunting the deceased on that count. The deceased had informed on several occasions on telephone to the complainant and his wife about the ill-treatment. After about one month of the marriage, the deceased had telephoned them saying that her in laws were demanding sum of Rs.2,00,000/- for purchase of a flat. As the complainant was not able to give the said money, the in laws of the deceased told him to pay the money or take back his daughter permanently. In October 2005, her in laws performed her forcible abortion when she was pregnant. The deceased had

committed suicide on account of the harassment by the in laws of the deceased.

4. On this accusation, a charge-sheet has been filed against the husband of the deceased and his parents as well as the two brothers, who are the present applicants.

5. The learned Counsel for the applicants, who are the brothers of the husband of the deceased submitted that there is absolutely no evidence against them and therefore they are entitled to be discharged.

6. Learned Counsel for the applicants took me through the statement of the complainant recorded on 7.1.2006 i.e. on the date of the incident. In the said incident the complainant has not spoken anything about ill-treatment to the deceased and has not impleaded the applicants or anyone else. He submitted that the FIR was lodged about four days of the suicide as an after thought and the statement made in the FIR, therefore, cannot be believed. He submitted that even the mother and brother of the deceased in their statements which were recorded on

7.1.2006 have not implicated the applicantss and therefore they are entitled to be discharged.

7. The learned APP for the State submitted that the statement of independent witness Surendra Dhumal and others have been recorded. The independent witnesses have narrated about the ill-treatment given to the deceased. In the circumstances, it cannot be said that there is no evidence against the applicants.

8. Section 227 of the Code of Criminal procedure states that if on consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in that behalf, the Judges considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. When a person who is accused of an offence makes an application for discharge on the ground that there is no sufficient ground for proceeding against him, the Court is not required to marshall the evidence in its entirety and consider whether at the trial the prosecution would be in a position to

bring home the guilt. At that stage the court is required to see whether there is not even prima face material to connect the accused to the offence. If the court comes to the conclusion that there is prima facie material to connect the accused to the offence then the court, at that stage enter into the question whether the said prima facie evidence would ultimately stand scrutiny at the time of appreciation of the evidence at the time.

9. In the present case there is prima facie material which implicates the applicants. The complainant has clearly stated that all the members in the family of the deceased were harassing the deceased. There are independent witnesses who have also stated about the alleged harassment. May be that there is delay in lodging the FIR, but the effect of delay is to be considered by the Court at the stage of appreciation of evidence at trial. At this stage it cannot be said that there is no ground for proceeding with the trial against the applicants. In the circumstances, I see no error in the order of the Sessions Court rejecting the discharge of the accused.

10. The revision application is accordingly rejected summarily.

11. It is made clear that all observations in this Order shall not be construed as finding on merits and at trial the court shall not in any way be influenced by the observations made this order.

(D.G.Karnik, J.)